

VZCZCRMI805

RR RUCBSDD RUFDNEA RUFPAFW RUFEPSS RUFNDFA RULSADO  
RUEADWD RUEAHQA RUFGNOA RUFDAAA RHDLCNE RHFQAAA RUFGFMC RUFPAHQ  
RUFNASC RUFRBEA RUFNETA RUFDNEA RUFEewa  
DE RUEHRO #0828/01 3041455

ZNR UUUUU

R 301455Z OCT 00

FM USSO ROME IT

TO RUCBSDD/TRISVCOFF EURSWA NAPLES IT//CO//  
RUFDNEA/CDRUSASETAF VICENZA IT//AESE-JA//  
RUFPAFW/31FW AVIANO AB IT//JA//  
RUFEPSS/NAS SIGONELLA IT//SJA//  
RUFNDFA/NAVSUPPACT LA MADDALENA IT//SJA//  
INFO RULSADO/NAVY JAG WASHINGTON DC//LO//  
RUEADWD/HQDA WASHINGTON DC//DAJA-IO//  
RUEAHQA/HQ USAF WASHINGTON DC//JAI//  
RUFGNOA/USCINCEUR VAIHINGEN GE//ECJA//  
RUFDAAA/CDRUSAREUR HEIDELBERG GE//AEAJA-IA//  
RHDLCNE/CINCUSNAVEUR LONDON UK//013//  
RHFQAAA/CINCUSUSAFE RAMSTEIN AB GE//JAI//  
RUFGFMC/HQ MARFOREUR BOEBLINGEN GE//SJA//  
RUFPAHQ/16AF AVIANO AB IT//JA//  
RUFNASC/COMFAIRMED NAPLES IT//SJA//  
RUFRBEA/USS SIMON LAKE //(AS 33)/SJA//  
RUFNETA/COMSUBGRU EIGHT//SJA//  
RUFDNEA/CDRUSASETAF VICENZA IT//AESE-VST-JA//  
RUFEewa/TRISVCOFF EURSWA DET SIGONELLA IT//OO//

BT

UNCLAS SECTION 01 OF 03 ROME IT

SUBJECT: ITALY - ASSERTIONS OF PRIMARY RIGHT IN MOTOR  
VEHICLE ACCIDENT CASES

- A. NATO SOFA
- B. SECNAVINST 5820.4G/AR 27-50/AFI 51-706
- C. CINCUSNAVEURINST 5820.8H/USAREUR REG 550-50/USAFE REG  
110-1
- D. USSSOINST 5820.1C

1. SUMMARY: THIS MESSAGE DISCUSSES RECENT UNFAVORABLE  
TRENDS IN FOREIGN CRIMINAL JURISDICTION (FCJ) CASES WHERE  
THE U.S. HAS ASSERTED ITS PRIMARY RIGHT OF JURISDICTION IN  
CONCURRENT JURISDICTION CASES. THIS MESSAGE ALSO SUGGESTS  
ACTIONS U.S. COMMANDS CAN TAKE TO INCREASE THE CHANCES OF  
FAVORABLE DECISIONS BY ITALIAN AUTHORITIES IN FUTURE  
ASSERTION CASES ARISING OUT OF MOTOR VEHICLE ACCIDENTS.
2. REFS A-D PROVIDE GUIDANCE ON U.S. ASSERTIONS OF PRIMARY  
RIGHT OF JURISDICTION IN FCJ CASES ARISING IN ITALY. THE  
GUIDANCE INCLUDES CITATIONS CONTAINED AT REF D TO ITALIAN  
GOVERNMENT PROCEDURAL REQUIREMENTS IN SUCH CASES. DESPITE  
TIMELY FILING OF U.S. ASSERTIONS BY THE U.S. "COGNIZANT  
MILITARY AUTHORITIES" (CMA'S) LISTED AT REF D, THE ITALIAN  
MINISTRY OF JUSTICE (MOJ) HAS BEEN REJECTING U.S.

ASSERTIONS OF PRIMARY RIGHT WITH INCREASING FREQUENCY. MOST OF THESE REJECTIONS HAVE OCCURRED IN MOTOR VEHICLE ACCIDENT CASES WHERE THE U.S. MILITARY MEMBER WAS NOT OPERATING A TACTICAL VEHICLE AND WAS TRAVELING BETWEEN HIS/HER DOMICILE AND DUTY LOCATIONS. HOWEVER, SOME CASES HAVE INVOLVED MILITARY MEMBERS USING THEIR POV'S TO CONDUCT ASSIGNED MILITARY DUTIES OFF MILITARY INSTALLATIONS, OR THE IN-COUNTRY, DUTY-RELATED TRAVEL OF TDY/TAD PERSONNEL PERMANENTLY ASSIGNED OUTSIDE OF ITALY. THESE REJECTIONS REFLECT A CHANGE FROM MOJ'S POSITION OF 1997 AND 1998, WHEN IT FORMALLY ACKNOWLEDGED U.S. ASSERTIONS OF PRIMARY RIGHT IN TWO POV COMMUTING CASES WHERE DEATHS TO ITALIAN NATIONALS RESULTED.

3. THE U.S. SENDING STATE OFFICE FOR ITALY (USSSO) HAS BEEN HAVING REGULAR DISCUSSIONS WITH MOJ ON THESE DISPUTED JURISDICTION CASES. USSSO IS ALSO CONTACTING DEFENSE ATTACHES REPRESENTING OTHER NATO SENDING STATES TO ITALY TO LEARN IF OTHER SENDING STATES ARE HAVING SIMILAR PROBLEMS. OUR CONTACTS WITH OTHER SENDING STATES ARE BEING MADE WITH A VIEW TOWARDS FORMULATING A JOINT PROPOSAL TO MOJ ADDRESSING SENDING STATE ASSERTIONS OF PRIMARY RIGHT AND OTHER AREAS OF CONCERN RELATED TO THE PROCESSING OF FCJ ACTIONS IN ITALY.

4. IN THE INTERIM, OUR REVIEW OF FCJ CASE FILES SUGGESTS THE NEED FOR CMA'S TO EXPLAIN IN MORE DETAIL THE FACTS AND CIRCUMSTANCES THAT LEAD TO THE CONCLUSION THAT AN OFFENSE AROSE OUT OF AN ACT OR OMISSION DONE IN THE PERFORMANCE OF OFFICIAL DUTY. WITH ADDITIONAL FACTS AND COGENT ARGUMENTATION, COGNIZANT PROSECUTORS ARE MORE LIKELY TO CONCUR WITH OUR ASSERTIONS, THEREBY SUBSTANTIALLY INCREASING THE CHANCES THAT MOJ WILL FORMALLY ACKNOWLEDGE THOSE ASSERTIONS.

5. FOR MOTOR VEHICLE ACCIDENT CASES, USSSO RECOMMENDS THE FOLLOWING POINTS BE ADDRESSED IN CMA ASSERTIONS OF PRIMARY RIGHT (WHETHER IN THE ASSERTION LETTER ITSELF OR AN ACCOMPANYING CERTIFICATE OF OFFICIAL DUTY), WHEN RELEVANT AND FAVORABLE TO HELPING OUR ITALIAN COUNTERPARTS CONCLUDE THAT AN OFFENSE AROSE OUT OF AN ACT OR OMISSION DONE IN THE PERFORMANCE OF OFFICIAL DUTY:

A. THAT THE U.S. DRIVER WAS PERFORMING A SPECIFIC ASSIGNED MILITARY MISSION AT THE TIME OF  
THE INCIDENT, WHAT THAT  
MISSION WAS, AND WHO ASSIGNED THE MISSION.

B. THAT THE U.S. DRIVER WAS OPERATING THE VEHICLE PURSUANT TO EXPLICIT WRITTEN OR VERBAL AUTHORIZATION FROM A MILITARY OR CIVILIAN SUPERIOR, AND WHO THAT SUPERIOR WAS. IF THE VEHICLE WAS BEING OPERATED TO CARRY OUT A MISSION IMPLIED IN A PRE-EXISTING WRITTEN REGULATION OR INSTRUCTION

INSTEAD, PROVIDE SUFFICIENT INFORMATION ON THE REGULATION OR INSTRUCTION FOR ITALIAN OFFICIALS TO CONCLUDE THE VEHICLE WAS BEING OPERATED TO CARRY OUT AN OFFICIAL DUTY.

C. THAT THE U.S. DRIVER WAS OPERATING A VEHICLE OWNED BY THE U.S. GOVERNMENT, A VEHICLE RENTED BY THE U.S. GOVERNMENT, OR A VEHICLE RENTED BY THE SERVICE MEMBER PURSUANT TO HIS/HER TDY/TAD ORDERS. WHEN A POV WAS USED, STATE THE REASONS WHY A GOV OR OTHER U.S.-PROVIDED VEHICLE WAS UNAVAILABLE. WHEN APPLICABLE, ALSO INDICATE THAT THE RENTAL VEHICLE WAS OBTAINED BY USE OF A U.S. GOVERNMENT CREDIT CARD ISSUED FOR OFFICIAL PURPOSES BUSINESS ONLY, AND THAT THE DRIVER IS ENTITLED TO REIMBURSEMENT (OR WAS REIMBURSED) FOR RENTAL CAR EXPENSES.

D. THAT THE U.S. DRIVER WAS TAKING THE MOST DIRECT ROUTE POSSIBLE TO COMPLETE THE REQUIRED TRAVEL, OR AT LEAST HAD NOT MADE A MATERIAL DEVIATION FROM HIS/HER AUTHORIZED ROUTE OF TRAVEL. IF APPROPRIATE, DESCRIBE THE AUTHORIZED ROUTE.

E. THAT THE U.S. DRIVER WAS IN MILITARY UNIFORM. IF THE DRIVER WAS IN CIVILIAN CLOTHING, STATE THE REASONS WHY THE TRAVEL WAS MADE IN CIVILIAN CLOTHING (E.G., INCREASED THREATCON LEVEL, TRAVEL TO A CIVILIAN SPONSORED FUNCTION THE DRIVER WAS ATTENDING IN AN OFFICIAL CAPACITY, EXTENDED TRAVEL TIME REQUIRING REST STOPS AT LOCATIONS WHERE THE WEARING OF MILITARY UNIFORMS WOULD BE INAPPROPRIATE, ETC.).

F. THAT THE U.S. DRIVER WAS OPERATING A VEHICLE REGISTERED "AFI" (ALLIED FORCES ITALY), WHETHER AN AFI GOV OR AN AFI POV.

G. THAT THE U.S. DRIVER HAD BEEN ISSUED "G" POL COUPONS FOR THE TDY/TAD TRAVEL AT ISSUE.

H. THAT THE U.S. DRIVER HAD BEEN ISSUED "P" POL COUPONS FOR DOMICILE TO DUTY TRAVEL. (THE ITALIAN MINISTRY OF FINANCE BASES MONTHLY "P" POL COUPON ALLOTMENTS ON REQUIRED DOMICILE TO DUTY TRANSPORTATION NEEDS OF U.S. MILITARY MEMBERS AND U.S. CIVILIAN EMPLOYEES.)

I. THAT THE U.S. DRIVER HAD BEEN ISSUED ADDITIONAL "P" POL COUPONS BY HIS/HER COMMANDER, AND THAT THE OFFENSE OCCURRED WHILE TRAVEL WAS BEING MADE FOR THE REASON ADDITIONAL "P" COUPONS WERE ISSUED.

J. THAT THE U.S. DRIVER WAS OPERATING A POV COVERED BY MANDATORY ITALIAN THIRD-PARTY LIABILITY INSURANCE AT LEAST IN THE MINIMUM AMOUNT REQUIRED BY ITALIAN LAW AND U.S. MILITARY REGULATIONS/INSTRUCTIONS. IN SUCH CASES PROVIDE THE NAME OF THE INSURER AND POLICY NUMBER.

6. ALTHOUGH NOT DIRECTLY RELATED TO THE QUESTION OF OFFICIAL DUTY, WE ALSO RECOMMEND THAT, WHERE APPROPRIATE, THE FOLLOWING LANGUAGE BE INCLUDED IN U.S. ASSERTION LETTERS, TO ADVISE MOJ AND ITALIAN PROSECUTORS OF CLAIMS REMEDIES THAT MAY BE AVAILABLE UNDER REF A.

SENDING STATE AUTHORITIES RECOGNIZE THIS INCIDENT (CAUSED) (MAY HAVE CAUSED) (INJURIES) (DAMAGES) (DEATH) TO (NAME), AN ITALIAN NATIONAL. ARTICLE VIII OF THE NATO SOFA PROVIDES A MECHANISM FOR CONSIDERATION OF CLAIMS ARISING FROM THE (INCIDENT) (ACCIDENT) AT ISSUE. SUCH CLAIMS ARE FILED WITH THE ITALIAN MINISTRY OF DEFENSE IN ROME. FURTHER INFORMATION ON THE FILING AND PROCESSING OF SUCH CLAIMS CAN BE OBTAINED FROM THE MINISTRY OF DEFENSE, TELEPHONE (06) 4735-4247 OR (06) 4735-6191.

7. EVEN FOLLOWING THE ABOVE GUIDANCE, WE REMAIN CONCERNED THAT MOJ WILL CONTINUE TO REJECT ALL ASSERTIONS OF PRIMARY RIGHT IN "PURE" POV COMMUTING CASES FOR AT LEAST THE NEAR FUTURE. WHILE WE CONTINUE TO WORK WITH MOJ ON THESE CASES, WE RECOMMEND, BUT DO NOT REQUIRE, THAT, FOR "PURE" COMMUTING CASES ONLY, CMA'S ALSO REQUEST WAIVER OF JURISDICTION IN THE ALTERNATIVE. SUCH REQUESTS SHOULD BE STYLED AS BEING MADE IN THE ALTERNATIVE AND SOLELY FOR THE PURPOSE OF ENSURING THE CASE WILL NOT BE CONSIDERED UNTIMELY FOR CONSIDERATION AS A REQUEST FOR WAIVER. ARGUABLY THIS

RECOMMENDATION UNDERCUTS THE ASSERTION OF PRIMARY RIGHT. HOWEVER, THIS IS THE ONLY WAY TO ENSURE A WAIVER REQUEST IS TIMELY FILED GIVEN THE ITALIAN PROCEDURAL REQUIREMENT THAT A REQUEST FOR WAIVER BE FILED BEFORE A SUMMONS TO TRIAL HAS BEEN ISSUED.

8. POC AT USSSO IS MAJ FORJOHN, JAGC, USA, DOIC, COM (0039) (06) 4674-2153, DSN (314) 625-3146, E-MAIL FORJOHNS@STATE.GOV.

9. CAPT OLIVER, JAGC, USN, OIC, SENDS.

BT

#0828